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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XG366

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category retention limit adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category daily retention limit from three large medium or giant BFT per vessel per day/trip to one large medium or giant BFT per vessel per day/trip for the remainder of the June through August 2018 subquota period. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective August 23, 2018, through August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Dianne Stephan, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Atlantic Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline U.S. quota is 1,058.9 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). See § 635.27(a). The current baseline General category quota is 466.7 mt. Each of the five General category time periods (“January,” June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. The current baseline subquotas for each time period are as follows: 24.7 mt (5.3 percent) for January; 233.3 mt (50 percent) for June through August; 123.7 mt (26.5 percent) for September; 60.7 mt (13 percent) for October through November; and 24.3 mt (5.2 percent) for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods. This action would adjust the daily retention limit for the

remainder of the second time period in 2018, which ends August 31, 2018.

Although NMFS has published a proposed rule (83 FR 31517, July 6, 2018) to increase the baseline U.S. bluefin tuna quota from 1,058.79 mt to 1,247.86 mt and subquotas for 2018 (including an expected increase in General category quota from 466.7 mt to 555.7 mt, consistent with the annual bluefin tuna quota calculation process established in § 635.27(a)), NMFS does not anticipate that the final rule will be effective until September 2018.

Adjustment of General Category Daily Retention Limit

The default General category retention limit is one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8). On May 11, 2018, NMFS adjusted the daily retention limit for the beginning of the June through August 2018 subquota period from the default level of one large medium or giant BFT to three large medium or giant BFT (83 FR 21936). NMFS has considered the relevant regulatory determination criteria and their applicability to the General category BFT retention limit for the remainder of the June through August 2018 subquota time period. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers

continue to provide NMFS with valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Prolonged opportunities to land BFT over the longest time-period allowable would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including landings and catch rates during the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Commercial-size BFT are currently readily available to vessels fishing under the General category quota. As of August 17, 2018, the General category has landed approximately 271.9 mt, which is 58 and 57 percent of the annual base and adjusted 2018 General category quotas, respectively. Landings since June 1, 2018, are 212.6 mt, representing 91 percent of the General category subquota for the June 1 through August 31 period. If current catch rates continue with the three-fish daily limit, the available subquota for June 1 through August 31 period could be reached or exceeded, and NMFS would need to close the fishery earlier than otherwise would be necessary under a lower limit. NMFS intends to provide General category participants in all areas and time periods opportunities to harvest the General category quota without exceeding it, through active inseason management such as retention limit adjustments and/or the timing and amount of quota transfers (based on consideration of the determination criteria regarding inseason adjustments), while extending the season as long as practicable. NMFS is setting the limit for the remainder of the June through August 2018 subquota period in such a way that NMFS believes, informed by past experience, increases the likelihood that the fishery will remain open throughout the subperiod and year.

NMFS also considered the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). The adjusted retention limit would be consistent with the established quotas and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. It is also important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the projections of stock rebuilding. Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the full General category quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on these considerations, NMFS has determined that a one-fish General category retention limit is warranted for the remainder of the June-August 2018 subquota period. The limit would provide a reasonable opportunity to harvest the full U.S. BFT quota (including the expected increase in available 2018 quota based on 2017 underharvest), without exceeding it, while maintaining an equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments. Therefore, NMFS adjusts the General category retention limit from three to

one large medium or giant BFT per vessel per day/trip, effective August 23, 2018, through August 31, 2018.

Regardless of the duration of a fishing trip, no more than a single day's retention limit may be possessed, retained, or landed. For example (and specific to the limit that will apply through August 31, 2018), whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of one fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeting fishing for BFT, and applies to vessels permitted in the General category, as well as to HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

Unless NMFS publishes a subsequent adjustment in the **Federal Register**, the default daily retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)) will apply for the September 2018 General category fishery, which begins September 1, 2018.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. In addition, General and HMS Charter/Headboat category vessel owners are required to report their own catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in,

all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery.

Prior notice and an opportunity for public comment is impracticable because the regulations implementing the 2006 Consolidated HMS FMP, as amended, intended that inseason retention limit adjustments would allow the agency to respond quickly to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, adjustment to the General category BFT daily retention limit from the current level is warranted.

Delays in adjusting the retention limit may result in the available June 1 through August 31 subquota being reached or exceeded and NMFS needing to close the fishery earlier than otherwise would be necessary under the lower limit being set for the remainder of this period. Such delays could adversely affect those General and HMS Charter/Headboat category

vessels that would otherwise have an opportunity to harvest BFT if the fishery were to remain open for as feasible throughout the remaining subquota periods. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the 2006 Consolidated HMS FMP, as amended. Adjustment of the retention limit needs to be effective as soon as possible to extend fishing opportunities for fishermen in all geographic areas, consistent with objectives of the 2006 Consolidated HMS FMP and provide equitable opportunities.

Prior notice and an opportunity for public comment is also impracticable for the retention limit adjustment to one fish for the remainder of the June through August 2018 subquota period. Avoiding delay in implementation will also allow fishermen to take advantage of the availability of fish on the fishing grounds and of quota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.23(a)(4), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 20, 2018.

Margo B. Schulze-Haugen,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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